

Exhibit A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

NP PALACE LLC

Employer

and

Case 28-RC-211644

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 501, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

International Union of Operating Engineers Local 501, AFL-CIO (Petitioner) seeks to represent a unit of full-time and regular part-time slot technicians and utility technicians employed by NP Palace LLC (the Employer) at its Las Vegas, Nevada facility. The Employer asserts that Petitioner cannot be certified as the representative of the employees in the petitioned-for unit under Section 9(b)(3) of the National Labor Relations Act (the Act) because the unit includes guards, and Petitioner admits employees other than guards to membership. The Employer also requested the imposition of a ban on electronic devices in the voting area.

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board decisions, I find the slot technicians and utility technicians are not guards. I further find that it is not appropriate for me to impose a ban on electronic devices in the voting area in these pre-election proceedings.

I. FACTS

The Employer operates a hotel and casino in Las Vegas, Nevada. The Employer's facility includes gaming spaces occupied, in part, by approximately 1,300 gaming machines.

The Employer employs approximately 11 slot technicians and utility technicians.¹ There is no functional distinction between them as they perform relatively the same work. Technicians work on the technical side of the Slot Department, which is under the direction of the Director of Slot Operations. The Slot Technical Manager and the Technical Project Specialist or Supervisor report to the Director of Slot Operations.

¹ Herein jointly referred to as "technicians".

Technicians install, maintain, and repair the gaming machines and software. A majority of their time is spent ensuring that the games are in proper working order. Technicians do not have the authority to resolve a complaint on their own. When there is a problem with a machine, technicians use their technical knowledge to check the status of the machine and relay the information to their supervisors to resolve the problem. For example, if a guest complains about a payout, the concern goes to a supervisor. Technicians do research to make sure the mechanics of the machines are working properly. The Employer's decision is then communicated to the guest by the supervisor. If the Director of Slot Operations sees a machine consecutively losing on too many days, then he asks a technician to check the machine against the settings of the game, and, if it is incorrect, the technician fixes it. Additionally, technicians are responsible for interacting with agents of the Nevada Gaming Control Board to facilitate their inspection of machines.

Besides aiding with claims of machine malfunction, technicians investigate possible fraud by customers. For example, a technician would be assigned to investigate whether there is evidence of tampering if irregular payouts are detected. Technicians also check a machine's history if a customer claims a bill validator (which validates cash or Ticket-In/Ticket-Out ticket) is jammed. The Employer would not be able to detect certain kinds of fraud without the work performed by technicians. Due to their intimate knowledge of the gaming systems, technicians are prohibited from gambling at the Employer's facility.

During the course of their shift, technicians are not allowed to interface with customers. During the course of a jackpot verification, technicians are not allowed to express a judgment or an opinion concerning the validity of a jackpot claim in the presence of a guest.

In order to perform their work, technicians carry keys that provide access to the machines' internal mechanisms. Technicians are not issued, nor do they carry, keys to the machine's internal cash can, which holds bills of various denominations.

Technicians, like all other employees of the Employer, are obligated to report malfeasances, such as underage gambling, underage drinking, and money laundering. Additionally, technicians, like all other employees, are required to report to security personnel any crime or suspicious activity they witness. However, technicians are not trained in hand-to-hand combat and are not allowed to physically touch guests, much less confront them.

The Employer has a Security Department, which is different from the Slot Department. The Security Department supervises the guards, whereas the Slot Department supervises the technicians. Guards wear police-like uniforms, but technicians wear uniforms that are worn by other maintenance employees. Guards and technicians are not interchangeable, and neither is qualified to perform the other's work duties. For example, guards receive training in typical security functions, perform regular security rounds, and are tasked with patrolling the Employer's exterior premises; technicians do not perform any of those enumerated duties.

Furthermore, technicians are not called upon to participate in "sting" operations to detect malfeasance by employees or customers. On this point, the Director of Slot Operations admitted that technicians have not participated in a "sting" operation during his employment.

II. ANALYSIS

A. Non-Guard Status of Technicians

Section 9(b)(3) of the Act prohibits the Board from certifying a labor organization as the representative of a guard unit if the labor organization has members who are non-guard employees. The Employer asserts the technicians are guards because the core function of a technician is to enforce the Employer's rules and policies against guests and employees to safeguard the Employer's property and assets. The parties stipulated that Petitioner admits non-guards to membership. Petitioner represents slot technicians at other non-Employer properties.

To be a guard under the Act, an individual must enforce rules to protect the property of the employer's premises against employees and other persons. *Reynolds Metal Co.*, 198 NLRB 120, 120 (1972). "[T]he Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities." *Boeing Co.*, 328 NLRB 128, 130 (1999).

"Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status." *Id.* The Board has rejected the assertion that an employee's "responsibility to report security problems confers guard status." *Id.* at 131.

While the Employer instructs technicians, as part of their job duties, to report to the Employer evidence of tampering with gaming machines or other fraudulent conduct, "[a] reporting function alone, without significant security-related responsibilities, [does not] confer guard status." *Id.* In *Boeing*, the Board rejected an assertion firefighters who were required "to be alert for suspicious activity while on their tours and question unfamiliar individuals on the premises" as well as "report suspicious activity to the security department rather than deal directly with it themselves" were guards. *Id.* at 131. The Board determined that "to the extent that the firefighters'...duties conferred upon them some limited guard responsibilities, those responsibilities were only a minor and incidental part of their overall responsibilities...and, thus, do not transform the firefighters into statutory guards." *Id.* at 131.

The Employer has not supported its claim that technicians are guards. The evidence presented does not show that technicians enforce rules to protect property against employees and other persons. From the evidence of record, technicians do not perform any of the traditional guard responsibilities identified by the Board in *Boeing*. Technicians were not hired to perform any security functions, and perform no security functions beyond what would be expected of any other employees.

Any guard-like responsibilities conferred on technicians are, like the firefighters in *Boeing*, a minor and incidental part of their primary responsibility of providing services to guests

gambling on the Employer's slot machines. As stated above, technicians do not confront people but are instead expected to report to the Employer.

The Employer pointed to the recent circuit court decision *Bellagio, LLC v. NLRB*, No. 16-1191, 2017 WL 3027221 (D.C. Cir. July 18, 2017), in asserting that because technicians play an integral role in detecting and investigating loss and malfeasance in connection with gaming machines, technicians are guards. In that decision, the key issue was whether surveillance technicians were guards under the Act. In finding that the surveillance technicians were guards, the Court focused on four facts: (1) that certain surveillance/security personnel could not perform their job functions without the surveillance technicians, (2) the Board did not give due consideration to the status of security in modern casinos, (3) surveillance technicians could control what surveillance/security personnel viewed via surveillance camera due to their access to the equipment and surveillance-critical areas of the casino, and (4) surveillance technicians were tasked with enforcing rules against fellow employees.

The only factor that technicians in this case share with those in *Bellagio* is that they work in a casino. The technicians' responsibilities here are distinct from security functions. I am, therefore, refusing to find that the Union cannot be certified as the representative of technicians on that basis.

B. The Employer's Request to Ban Electronic Devices in the Voting Area

The Employer has requested that nobody be permitted to possess electronic devices in the polling area. Section 102.64 of the Board's Rules and Regulations states that the purpose of pre-election hearings is to determine whether a question of representation exists. The Employer's request goes beyond that purpose, insofar as it raises an issue concerning the manner in which the election will be conducted. In any event, the Board agent assigned to conduct the election and the parties' observers can monitor the polling area to ensure electronic devices are not being used in a manner that will interfere with the required laboratory conditions for an election, and, if electronic devices are used in the polling area during the election, either party can raise the question of whether such conduct was objectionable in timely filed objections.

III. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.³
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time slot technicians and utility technicians employed by the Employer at its Las Vegas, Nevada facility, excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.⁴

There are approximately 11 employees in the unit found appropriate.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for the purposes of collective bargaining by INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO.

A. Election Details

The election will be held on Tuesday, January 9, 2018, from 11:30 a.m. to 1:30 p.m. and 2:30 p.m. to 4:30 p.m. at Salon G at the Employer's facility, located at 2411 West Sahara Avenue, Las Vegas, Nevada.

² I find, based on the stipulations of the parties and the record evidence, that the Employer, NP Palace LLC, a limited liability company with an office and place of business in Las Vegas, Nevada, has been engaged in the operation of a hotel and casino, providing gaming, lodging, entertainment, and dining services. During the 12-month period ending December 15, 2017, the Employer, in conducting its business operations described above, derived gross revenue in excess of \$500,000. During the same period of time, the Employer purchased and received at its Nevada facility goods valued in excess of \$50,000 directly from points outside the State of Nevada.

³ The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁴ The unit found appropriate conforms with the unit sought by Petitioner. The Employer did not contend that the unit was not appropriate, in the event that the technicians were found not to be guards within the meaning of Section 9(b)(3) of the Act.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending December 31, 2017, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Thursday, January 4, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE Washington, D.C. 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 3rd day of January, 2018.

/s/ *Cornele A. Overstreet*
Cornele A. Overstreet, Regional Director

Exhibit B

**UNITED STATES OF AMERICA
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ENGINEERS LOCAL 501, AFL-CIO**

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TYPE OF ELECTION: RD DIRECTION

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for **INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO**, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

UNIT: All full-time and regular part-time slot technicians and utility technicians employed by the Employer at its Las Vegas, Nevada facility; excluding, all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.



Signed at Phoenix, Arizona on
the 18th day of January 2018.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,¹ an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.